

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MICHAEL KATZ-LACABE, et al.,

Case No. 3:22-cv-04792-RS

Plaintiffs,

Honorable Richard Seeborg

ORACLE AMERICA, INC.,

ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Defendant.

WHEREAS, Plaintiffs Michael Katz-Lacabe and Dr. Jennifer Golbeck (“Settlement Class Representatives”), on behalf of themselves and the Settlement Class as defined below, and Defendant Oracle America, Inc. (“Oracle”) (collectively, the “Parties”) entered into a Settlement Agreement (ECF No. 132-2) on July 8, 2024, which sets forth the terms and conditions for a proposed settlement of this Action and for its dismissal with prejudice upon the terms and conditions set forth therein;¹

WHEREAS Plaintiffs have moved pursuant to Rule 23(e), for an order preliminarily approving the settlement of this Action; and

WHEREAS, the Court is familiar with and has reviewed the record, the Settlement Agreement, Plaintiffs' Notice of Motion and Motion for Preliminary Approval of Class Action

¹ All capitalized terms not defined herein have the same meaning as in the Settlement Agreement, which is provided as Exhibit 1 to the Plaintiffs' Motion for Preliminary Approval.

1 Settlement, the Memorandum of Points and Authorities in support thereof, and the supporting
 2 Declarations;

3 **NOW THEREFORE, it is hereby ORDERED and ADJUDGED as follows:**

4 1. Jurisdiction. The Court preliminarily finds that the Court has personal jurisdiction
 5 over all Settlement Class Members, that the Court has subject-matter jurisdiction over the claims
 6 asserted in the Action, and that the venue is proper;

7 2. Preliminary Approval of Proposed Settlement Agreement. The Court preliminarily
 8 finds that the Parties have shown the Court it will likely be able to approve the proposed
 9 Settlement, as embodied in the Settlement Agreement, as being fair, reasonable, and adequate
 10 under Rule 23(e) of the Federal Rules of Civil Procedure, subject to further consideration at the
 11 Final Approval Hearing to be conducted as described in Paragraph 28 below.

12 3. The Court further finds that the Settlement Agreement substantially fulfills the
 13 purposes and objectives of the class action and provides substantial relief to the Settlement Class
 14 without the risks, burdens, costs, or delay associated with continued litigation, trial, and/or appeal.
 15 The Court also finds that the Settlement Agreement: (a) is the result of informed, arm's-length
 16 negotiations between experienced class action attorneys and made with the assistance of the
 17 mediation services of Professor Eric D. Green, Esq. and Fouad Kurdi, Esq.; (b) is sufficient to
 18 warrant notice of the Settlement and the Final Approval Hearing to be disseminated to the
 19 Settlement Class; and (c) meets all applicable requirements of law, including Federal Rule of
 20 Civil Procedure 23 and the Class Action Fairness Act, 28 U.S.C. § 1715, the United States
 21 Constitution, and the United States District Court for the Northern District of California's
 22 Procedural Guidance for Class Action Settlements.

23 4. Direction of Class Notice. The Court further finds that the Settlement is within the
 24 range of reasonableness such that Class Notice shall be provided.

25 **II. PRELIMINARY CERTIFICATION OF THE SETTLEMENT CLASS**

26 5. Settlement Class. The Settlement is hereby preliminarily approved as fair,
 27 reasonable, and adequate such that notice thereof should be given to members of the Settlement
 28 Class. Under Federal Rule of Civil Procedure 23(b)(3), the Settlement Class, as set forth in

1 paragraph R of the Settlement Agreement and defined as follows, is preliminarily certified for the
 2 purpose of settlement only:

3 All natural persons residing in the United States whose personal information, or
 4 data derived from their personal information, was acquired, captured, or otherwise
 5 collected by Oracle Advertising technologies or made available for use or sale by
 6 or through ID Graph, Data Marketplace, or any other Oracle Advertising product
 7 or service from August 19, 2018 to the date of final judgment in the Action.

8 Excluded from the Settlement Class are (i) Oracle; (ii) Oracle's parents, subsidiaries, affiliates,
 9 officers, directors, investors, and employees; (iii) any entity in which Oracle has a controlling
 10 interest; (iv) any individual who would otherwise be included in the Settlement Class, but has
 11 agreed, in another proceeding, to release claims covered by this Settlement prior to the Claim Form
 12 deadline identified in Section 3.6 of the Settlement Agreement; and (v) any judge presiding over
 13 this Action, their staff, and the members of the judge's immediate family.

14 6. The Court finds, subject to the Final Approval Hearing, that within the context of
 15 and for the purposes of settlement only, the Settlement Class satisfies the prerequisites of Rule 23
 16 of the Federal Rules of Civil Procedure, including numerosity, commonality, typicality,
 17 predominance of common issues, superiority, and that the Plaintiffs are adequate representatives
 18 of the Settlement Class.

19 7. Class Representatives and Class Counsel. For purposes of settlement only (a)
 20 Michael W. Sobol and David T. Rudolph of Lieff Cabraser Heimann & Bernstein, LLP are
 21 appointed as Class Counsel for the Settlement Class; (b) Plaintiffs Michael Katz-Lacabe and
 22 Jennifer Golbeck are appointed Settlement Class Representatives for the Settlement Class; and (c)
 23 the Court finds that these attorneys are competent and capable of exercising the responsibilities of
 24 Class Counsel and that Settlement Class Representatives will adequately protect the interests of
 25 the Settlement Class.

26 **III. NOTICE AND SETTLEMENT ADMINISTRATION**

27 8. Settlement Administrator. The Court appoints Angeion Group, LLC ("Settlement
 28 Administrator") to serve as the Settlement Administrator. The Settlement Administrator is

1 directed to carry out the Notice Plan in conformance with the Settlement Agreement and the
 2 below stated schedule, and to perform all other tasks that the Settlement Agreement requires of it.

3 9. Qualified Settlement Fund. The Settlement Administrator is authorized to establish
 4 the Settlement Fund under 26 C.F.R. §§ 1.468B-1(d)(1) for federal tax purposes. The Settlement
 5 Fund shall be a court-approved Qualified Settlement Fund (“QSF”) for federal tax purposes
 6 pursuant to Treas. Reg. § 1.468B-1. Oracle shall be the “transferor” to the QSF within the
 7 meaning of Section 1.468B-1(d)(1) of the Treasury Regulations with respect to the Settlement
 8 Fund. The Settlement Administrator shall be the “administrator” of the QSF within the meaning
 9 of Section 1.468B-2(k)(3) of the Treasury Regulations, responsible for causing the filing of all tax
 10 returns required to be filed by or with respect to the QSF, paying from the QSF any taxes owed
 11 by or with respect to the QSF, and complying with any applicable information reporting or tax
 12 withholding requirements imposed by Section 1.468B-2(l)(2) of the Treasury Regulations or any
 13 other applicable law on or with respect to the QSF. Oracle shall provide to the Settlement
 14 Administrator any documentation reasonably requested by the Settlement Administrator that is
 15 required to obtain QSF status for the Settlement Fund pursuant to Treas. Reg. §1.468B-1. All
 16 taxes on income or interest generated by the Settlement Fund, if any, shall be paid out of the
 17 Settlement Fund.

18 10. Class Notice. The Court finds that the content, format, and method of
 19 disseminating notice as set forth in the Settlement Agreement and documents in support of
 20 Plaintiffs’ Motion satisfy the requirements of Federal Rule of Civil Procedure 23 and are
 21 approved. As set forth in ¶ 7.2.3 of the Settlement Agreement, the Settlement Administrator shall
 22 disseminate direct notice to each potential Settlement Class member whom Oracle has an
 23 available email address.² The Settlement Administrator shall also establish a digital media
 24 campaign as set forth in ¶ 7.2.4 of the Settlement Agreement. The Court approves, as to form and
 25 content, the Notice Plan, the Settlement Website, Toll-Free Number, and the forms of notice
 26 (attached as Exhibits B (Email Notice) and C (Detailed Notice) to the Settlement Agreement).

27 2 Oracle shall provide to the Settlement Administrator any names, addresses, and email addresses
 28 for all potential members of the Settlement Class for whom it has reasonably available records
 within fourteen (14) days of the date of entry of this Order.

1 Nonmaterial modifications to the notices may be made by the Settlement Administrator without
 2 further order of the Court, so long as they are approved by the Parties and consistent in all
 3 material respects with the Settlement Agreement and this Order.

4 11. The Court further finds that the form, content, and method of giving notice to the
 5 Settlement Class as described in the Notice Plan submitted with the Motion for Preliminary
 6 Approval: (a) constitute the best practicable notice to the Settlement Class; (b) are reasonably
 7 calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the
 8 Action, the terms of the proposed Settlement, and their rights to object to the Settlement and to
 9 exclude themselves from the Settlement Class; (c) are reasonable and constitute due, adequate,
 10 and sufficient notice to those persons entitled to receive notice; and (d) satisfy the requirements of
 11 Federal Rule of Civil Procedure 23, the constitutional requirement of due process, and any other
 12 legal requirements. Accordingly, the Court hereby approves such notice and directs that such
 13 notice be disseminated in the manner set forth in the proposed Settlement Agreement under Rule
 14 23.

15 12. The Settlement Administrator shall provide notice consistent with the Notice Plan
 16 and notice shall begin to be disseminated to Settlement Class Members within twenty-one (21)
 17 days of this Order (“Notice Date”). All costs associated with providing all forms of notice,
 18 responding to inquiries from the Settlement Class, and performing all other Settlement
 19 Administrator’s duties shall be paid out of the Settlement Fund, as set forth in ¶¶ 3.2.5, 3.2.15.1,
 20 and 7.4 of the Settlement Agreement.

21 13. CAFA Notice. The Court finds that the CAFA notice sent by the Settlement
 22 Administrator on behalf of Oracle complies with the notice provisions of the Class Action
 23 Fairness Act of 2005, 28 U.S.C. § 1715, and all other provisions of the Class Action Fairness Act
 24 of 2005.

25 14. Submission of Claims. To participate in the Settlement, Class Members must
 26 follow the directions in the Settlement Agreement, Notice, and submit an Approved Claim with
 27 the Claims Administrator by the Claims Deadline of October 17, 2024, which is forty-nine (49)
 28 days after the settlement Notice Date. Class Members who do not submit a claim and those who

1 do not submit Valid Claims will not receive a cash award, but they will be bound by the
 2 Settlement.

3 15. Processing Claims. The Settlement Administrator shall review all Claim Forms to
 4 determine their validity and each Claimant's eligibility, and shall employ reasonable procedures
 5 to screen claims for abuse or fraud. The Settlement Administrator shall determine whether a
 6 Claim Form submitted by a Settlement Class Member is a Valid Claim and shall reject any claim
 7 that does not materially comply with the instructions on the Claim Form, is not submitted by a
 8 Settlement Class Member, or is deemed to be duplicative or fraudulent.

9 16. Class Member Data. The Settlement Administrator shall act in compliance with
 10 the Joint Stipulated Protective Order (ECF No. 28), including but not limited to keeping identities
 11 and contact information of all potential members of the Settlement Class confidential, using them
 12 only for purposes of administrating this Settlement.

13 17. Settlement Distribution. As provided in paragraph H of the Settlement Agreement,
 14 the Net Settlement Fund shall be defined as the Settlement Fund less (a) the cost of settlement
 15 notice and administration, (b) the Attorneys' Fees and Expenses Award, (c) Service Awards, and
 16 (d) any Taxes.

17 18. Allocation. Subject to further consideration at the Final Approval Hearing, the Net
 18 Settlement Fund shall be distributed to Valid Claimants, who will receive payment of their *pro*
 19 *rata* share, as determined by dividing the Net Settlement Fund by the number of Valid Claims.

20 19. If the Settlement Administrator determines that any residual funds remaining in the
 21 Net Settlement Fund after the initial distribution of payments cannot be feasibly distributed in a
 22 secondary distribution on a *pro rata* basis to Settlement Class Members who submitted a Valid
 23 Claim, the remaining funds shall be distributed *cy pres* to 26 U.S.C. § 501(c)(3) non-profit
 24 Eligible Organization(s), subject to further court-approval.

25 **IV. OPT-OUT AND OBJECTION PROCEDURES**

26 20. Exclusion from the Settlement Class. Any person falling within the definition of
 27 the Settlement Class may, upon request, be excluded or "opt out" from the Settlement Class. Any
 28 person who desires to opt out must submit written notice of such intent via United States Mail to

1 the designated address established by the Settlement Administrator by the Request for Exclusion
 2 (Opt-Out) Deadline, set forth in Paragraph 21, below. The written request to opt out must include:
 3 (i) the name of the Action; (ii) the person's full name, mailing address, email address, and
 4 telephone number; (iii) a specific statement of the person's intention to be excluded from the
 5 Settlement; (iv) the identity of the person's counsel, if represented; and (v) be personally signed
 6 by the individual Settlement Class Member under penalty of perjury.

7 21. Requests seeking exclusion on behalf of more than one individual shall be deemed
 8 invalid by the Settlement Administrator. To be effective, the written notice shall be postmarked to
 9 the Settlement Administrator forty-nine (49) days after the Notice Date, in accordance with ¶ 6.3
 10 of the Settlement Agreement ("Request for Exclusion (Opt-Out) Deadline"). The date of the
 11 postmark on the envelope containing the written Request for Exclusion shall be the exclusive
 12 means used to determine whether a request for exclusion has been timely submitted. In the event
 13 a postmark is illegible, the date of mailing shall be deemed to be three days prior to the date that
 14 the Settlement Administrator received a copy of the request for exclusion from the Settlement.

15 22. Any individual in the Settlement Class who does not submit a valid and timely
 16 Request for Exclusion in the manner described herein shall be deemed to be a Settlement Class
 17 Member upon expiration of the Request for Exclusion (Opt-Out) Deadline, and shall be bound by
 18 all subsequent proceedings, orders, and judgments applicable to the Settlement Class (including
 19 the Final Approval Order and Final Judgment dismissing the Action).

20 23. Objections to the Settlement. Any Settlement Class Member who wishes to object
 21 to the fairness, reasonableness, or adequacy of the Settlement, or to Class Counsel's requested
 22 Attorneys' Fees and Expenses Award or any requested Service Awards for the Settlement Class
 23 Representatives must follow the procedures set forth below.

24 24. No Settlement Class Member will be heard on such matters unless they have filed
 25 an objection, together with any briefs, papers, statements, or other materials the Settlement Class
 26 Member wishes the Court to consider, by the Objection Deadline, set forth in Paragraph 25
 27 below. Any objection must include: (i) a caption or title that identifies it as an objection to the
 28 Settlement in this Action; (ii) the Settlement Class Member's full name, mailing address, email

1 address, and telephone number; (iii) the objector's basis for believing they are a Settlement Class
 2 Member; (iv) a statement whether the objector intends to appear at the Final Approval Hearing
 3 and, if so, whether personally or through counsel; (v) a clear and concise statement of the grounds
 4 for the objection; and (vi) a statement identifying their counsel, if they are represented by counsel.

5 25. Objections must be in writing and must be signed by the objector. Objections must
 6 (a) be submitted only to the Court either by mailing them to the Class Action Clerk, United States
 7 District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco,
 8 CA 94102, or by filing them electronically or in person at any location of the United States
 9 District Court for the Northern District of California, and (b) be filed or postmarked within forty-
 10 nine (49) days after the Notice Date ("Objection Deadline").

11 26. No Settlement Class Member may contest the approval of the terms and conditions
 12 of the Settlement, the Final Judgment, the request for an Attorneys' Fees and Expenses Award, or
 13 the request for Service Awards, except by filing and serving a written objection in accordance
 14 with the provisions set forth above. Any Settlement Class Member who fails to object to the
 15 Settlement in the manner prescribed above, or who fails to do so by the Objection Deadline, shall
 16 be deemed to have waived any such objection, shall not be permitted to object to any terms or
 17 approval of the Settlement at the Final Approval Hearing, and shall be precluded from seeking
 18 any review of the Settlement or the terms of the Settlement Agreement by appeal or any other
 19 means.

20 27. Settlement Class Members cannot both object to and exclude themselves from the
 21 Settlement Agreement. Any Settlement Class Member who attempts to do so will be deemed to
 22 have excluded themselves and will have forfeited the right to object to the Agreement or any of
 23 its terms. In other words, Settlement Class Members who submit a valid and timely Objection,
 24 but also submit a valid and timely Request for Exclusion, will be deemed to have opted out of the
 25 Settlement and their objection will be void and invalid.

26 **V. FAIRNESS HEARING**

27 28. A hearing will be held by this Court in the Courtroom of The Honorable Richard
 28 Seeborg, United States District Court for the Northern District of California, United States

1 Courthouse, Courtroom 3 on the 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102,
 2 at 1:30 p.m. on November 14, 2024 (“Final Approval Hearing”), to determine: (a) whether the
 3 Settlement should be approved as fair, reasonable, and adequate; (b) whether a Final Approval
 4 Order and Final Judgment should be entered dismissing the Action with prejudice except as to
 5 such Settlement Class Members who timely submit valid Requests for Exclusion in accordance
 6 with the Settlement Agreement and the Class Notice; (c) whether the Settlement benefits as
 7 proposed in the Settlement Agreement should be approved as fair, reasonable, and adequate; (d)
 8 whether to approve the application for Service Awards for the Settlement Class Representatives
 9 and an Attorneys’ Fees and Expenses Award to Class Counsel; and (e) any other matters that may
 10 properly be brought before the Court in connection with the Settlement. The Court may approve
 11 the Settlement with such modifications as the Parties may agree to, if appropriate, without further
 12 notice to the Settlement Class. The Final Approval Hearing may, without further notice to the
 13 Settlement Class Members (except those who have filed timely and valid objections and
 14 requested to speak at the Final Approval Hearing), be continued or adjourned by order of the
 15 Court.

16 29. Class Counsel’s motion for Attorneys’ Fees and Expenses Award and Service
 17 Awards will be considered separately from the fairness, reasonableness, and adequacy of the
 18 Settlement. Any order or proceeding relating to the amount of any award of attorneys’ fees, costs,
 19 or expenses or Service Awards, or any appeal from any order relating thereto, or reversal or
 20 modification thereof, shall not operate to modify, terminate, or cancel the Settlement Agreement.

21 30. Reasonable Procedures. Class Counsel and defense counsel are hereby authorized
 22 to use all reasonable procedures in connection with approval and administration of the Settlement
 23 that are not materially inconsistent with this Order or the Settlement Agreement, including
 24 making, without further approval of the Court, minor changes to the form or content of the
 25 notices and other exhibits that they jointly agree are reasonable or necessary to further the
 26 purpose of effectuating the Settlement Agreement.

27 31. Extensions of Time. The time periods and dates provided in this Order may be
 28 altered by the Court or through written consent of the Parties’ counsel, without notice to the

1 Settlement Class; provided, however, that any such changes in the schedule of Settlement
 2 proceedings will be posted on the Settlement Website (www.KatzPrivacySettlement.com).

3 32. Termination of the Settlement and Use of this Order. If the Judgment does not
 4 become final, the Parties shall be restored to their respective positions in the Action as of the date
 5 of the signing of the Settlement Agreement and this Order shall be null, void, and vacated, and
 6 shall not be used or cited thereafter by any person or entity.

7 33. The following chart summarizes the dates and deadlines set by this Order.

Event	Date	Relevant Provisions of Settlement Agreement and Parties' Proposal
Deadline for Class Counsel's Motions for Attorneys' Fees, Expenses, and Service Awards	August 28, 2024	Per ¶ 5.5 of the Settlement Agreement, at least 50 days <u>prior to Exclusion and Objection Deadline</u>
Notice Date	August 29, 2024	Per Definitions, § 1, ¶ J of the Settlement Agreement, no later than 21 days after <u>issuance of Preliminary Approval Order</u>
Request for Exclusion (Opt-Out) or Objection Deadline	October 17, 2024	Per ¶¶ 5.2, 6.3 of the Settlement Agreement, 49 days after <u>Notice Date</u>
Responses to Objections	October 31, 2024	Per ¶ 5.6 of the Settlement Agreement, 14 days after <u>Objection Deadline</u>
Deadline to Submit Claim Form	October 17, 2024	Per ¶ 3.6 of the Settlement Agreement, 49 days after <u>Notice Date</u>
Deadline for Motion for Final Approval	October 31, 2024	(14 days after <u>Claim Form Deadline</u>)
Fairness Hearing	November 14, 2024	

26 **IT IS SO ORDERED.**
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1 Dated: August 9, 2024
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Hon. Richard Seeborg
United States District Judge